

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1041 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

CHARITY COMMISSIONER  
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Appearance:

Mr.P.K.Shukla, AGP for appellant  
MR AJ MEMON for Respondent No. 1  
Mr.K.G. Sheth, AGP, for respondent No.2  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. Appellant-State of Gujarat, by filing this appeal under Section 72 of the Bombay Public Trusts Act, 1950 ('Act' for short) has challenged judgment and order dated November 23, 1979, passed by the City Civil Court, Ahmedabad, in Civil Misc. Application No.271 of 1978.

2. Few relevant facts leading to filing of this appeal may be summarized as under:- One Shukla Sitaram Ramprannacharya filed application to register properties situated at Juna Vadaj in the name of Shri Gaushala Hanumanji Shivji Ganpatiji as public trust properties. One open plot bearing City Survey No.568 of Juna Vadaj was also shown as property of the said Trust in the application filed for registration of public trust. The application was treated as uncontested and the aforesaid temple was registered with particulars stated in the application. The City Collector, having come to know that the property bearing City Survey No.568 was shown as 'public trust property', filed application under Section 22(A) of the Act for enquiry in respect of title of the government over the property bearing City Survey No.568 of Juna Vadaj. The said application filed by the City Collector under Section 22(A) of the Act was registered as Enquiry Proceeding No.955 of 1968. It transpires that, because of some orders passed in the enquiry proceedings, the matter was carried to this Court and this Court had remanded matter to the Deputy Charity Commissioner to conduct the said proceedings in accordance with law. The record of Deputy Charity Commissioner indicates that the Deputy Charity Commissioner on November 25, 1976, dismissed application filed by the City Collector under Section 22(A) of the Act, namely, Enquiry Proceeding No.955 of 1968, for non-prosecution. The appellant filed Miscellaneous Application No.9 of 1976 before the Deputy Charity Commissioner to restore Enquiry Proceeding No.955 of 1968. The said application was numbered as Miscellaneous Application No. 9 of 1976. The Deputy Charity Commissioner, Ahmedabad Region, Ahmedabad, by his order dated May 2, 1977, dismissed the said application filed by the appellant for restoration of Enquiry Proceeding No.955 of 1968.

3. The order of the Deputy Charity Commissioner passed below Miscellaneous Application No.9 of 1976, dated May 2, 1977, was challenged by the appellant before the Charity Commissioner by filing Appeal No.33 of 1977. The said appeal was heard by the Charity Commissioner, Gujarat State, Ahmedabad, who, by his order dated December 30, 1977, dismissed the appeal by holding that, as the appellant had not challenged the order/finding in the Enquiry Proceeding No.955 of 1968, the appeal was not maintainable against the order of rejection of restoration Misc. Application No. 9 of 1976. The Charity Commissioner, in his order dated December 30, 1977 observed that as under:

"It would, however, be open to the City Deputy Collector to file an appeal or revision application as advised against the original order of the Deputy Charity Commissioner by which Inquiry Proceeding No.955 of 1968 initiated by him has been dismissed for want of prosecution, since that order undoubtedly is an appealable order under the Act".

In the ultimate analysis, the Charity Commissioner, by his order dated December 30, 1977, dismissed appeal filed by the appellant.

5. The order of the Charity Commissioner was challenged by the appellant by filing Misc. Civil Application No.271 of 1978 in the City Civil Court, at Ahmedabad. Civil Misc. Application No.271 of 1978 was heard by learned Judge, Court No.12, City Civil Court, Ahmedabad, who, by judgment and order dated November 23, 1978, dismissed the application with costs. Learned Judge, City Civil Court, while dismissing the application, observed that provision of Order IX of the Code of Civil Procedure is not applicable to enquiry by the Deputy Charity Commissioner under the Act. Therefore, the order passed by the Deputy Charity Commissioner will not fall in any of the orders contemplated under Section 70 of the Act. Learned City Civil Judge, in the concluding part of his judgment, approved the observations made by the Charity Commissioner, which are as under:

"It would, however, be open to the City Deputy Collector to file an appeal or revision application as advised against the original order of the Deputy Charity Commissioner by which Inquiry Proceeding No.955 of 1968 initiated by him has been dismissed for want of prosecution, since that order undoubtedly is an appealable order under the Act. Therefore, it will still be open for appellant to take necessary action against the original order passed in Inquiry No.955 of 1968. I, therefore, pass the following order:-

Order

Application is dismissed with costs."

6. Learned Assistant Government Pleader, Mr. P.K. Shukla, has taken me through entire record and proceeding of the case and has submitted that learned Judge, City Civil Court, has erred in not restoring Original Enquiry Proceeding No.955 of 1968. It is further submitted that there was no finding recorded by the Deputy Charity Commissioner under Section 22(A) of the Act. Therefore, no appeal was maintainable under the provision of Section 70 of the Act and, therefore, learned Judge ought to have entertained miscellaneous application filed by the

appellant. Learned Assistant Government Pleader further submitted that it was in the interest of justice to restore Enquiry Proceeding No. 955 of 1968 as the Trust had wrongly shown 'government property' as 'trust property'.

5. I have heard learned advocate Mr. A.J.Memon, for the respondent, who supported the orders passed by the learned Charity Commissioner and learned Judge, City Civil Court, Ahmedabad.

6. It is an admitted fact that the appellant had not challenged the final order of dismissal passed in Enquiry Proceeding No.955 of 1968 and had only challenged the order passed by the Deputy Charity Commissioner in Misc. Application No.9 of 1976, by which, the application for restoration of Enquiry Proceeding No.955 of 1968 was rejected. It is not brought to the notice of this Court that provisions of Code of Civil Procedure are applicable to the proceedings under the Act. Therefore, prima facie, it appears that the application for restoration, presumably under Order 9 Rule 13 of the Code of Civil Procedure, was not maintainable. The only course, which would have been open for the appellant, was to file appeal against dismissal of Enquiry Proceeding No.955 of 1968 initiated under Section 22(A) of the Act by the City Deputy Collector. The findings recorded and conclusion arrived at by the courts below, in my opinion, are based bearing in mind the relevant provisions of the Act. If the provisions of Code of Civil Procedure are not applicable to the proceedings under the Trust Act, in my opinion, the appellant ought to have preferred appeal under Section 70 or revision under Section 70(A) of the Act challenging the final order passed in Enquiry Proceeding No.955 of 1968. When provisions of Code of Civil Proceedings were not applicable to the proceedings under the Act, the courts below had rightly held that the application for restoration was not maintainable and the only course open to the appellant was to file appeal challenging the finding of the Deputy Charity Commissioner recorded in the application filed under Section 22(A) of the Act.

6. As a result of foregoing discussion, the appeal fails and is dismissed with no order as to costs. However, it would be open to the City Deputy Collector to file an appeal or revision application as advised against the original order of the Deputy Charity Commissioner by which Inquiry Proceeding No.955 of 1968 initiated by him has been dismissed for want of prosecution.

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